



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/160041

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 19, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on October 02, 2014, at Racine, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

NOTES: The record was held open to give the agency an opportunity to submit copies of the income verification provided by the Petitioner. The agency submitted a 72-page fax that has been marked as Exhibit 17 and entered into the record.

The timeliness issue was not discovered until after the October 2, 2014 hearing; if Petitioner contests the determination that he missed the appeal deadline by one day, he is referred to the rehearing instructions below.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jelena Jones, Economic Support Fraud Specialist  
Racine County Department of Human Services  
1717 Taylor Ave.  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On July 1, 2014, the agency sent the Petitioner two manual overpayment notices:
 

The first, indicating that he was over paid \$6,938.79 in benefits for the period of August 1, 2011 to February 28, 2014. This was for benefits paid for himself and his wife. (Exhibit 8; Testimony of Ms. Jones)

The second, indicating that he was overpaid \$3,259.77 in BadgerCare+ benefits for the period of September 1, 2011 to June 30, 2014. This was for benefits paid on behalf of Petitioner's children. (Exhibit 9; Testimony of Ms. Jones)
3. On July 2, 2014, the agency sent the Petitioner seven automated overpayment notices:
 

Claim [REDACTED], indicating that he was overpaid benefits in the amount of \$1,883.98 for the period of August 1, 2011 to May 31, 2012. This was for benefits paid for Petitioner and his wife. (Exhibit 10; Testimony of Ms. Jones)

Claim [REDACTED], indicating that he was overpaid benefits in the amount of \$837.00 for the period of September 1, 2011 to May 31, 2011. This was for benefits paid for Petitioner and his wife. (Exhibit 11; Testimony of Ms. Jones)

Claim [REDACTED], indicating that he was overpaid benefits in the amount of \$3,952.43 for the period of November 1, 2012 to September 30, 2013. This was for benefits paid for Petitioner and his wife. (Exhibit 13; Testimony of Ms. Jones)

Claim [REDACTED], indicating that he was overpaid benefits in the amount of \$1,102.43 for the period of October 1, 2013 to February 28, 2014. This was for benefits paid for Petitioner and his wife. (Exhibit 14; Testimony of Ms. Jones)

Claim [REDACTED], indicating that he was overpaid benefits in the amount of \$1,357.59 for the period of October 1, 2012 to September 30, 2013. This was for benefits paid for Petitioner's children. (Exhibit 12; Testimony of Ms. Jones)

Claim [REDACTED], indicating that he was overpaid benefits in the amount of \$1035.18 for the period of October 1, 2013 to May 31, 2014. This was for benefits paid for Petitioner's children. (Exhibit 15; Testimony of Ms. Jones)

Claim [REDACTED], indicating that he was overpaid benefits in the amount of \$30.00 for the period of June 1, 2014 through June 30, 2014. This was for benefits paid for Petitioner's children. (Exhibit 16; Testimony of Ms. Jones)
4. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 19, 2014.

### **DISCUSSION**

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application, the reduction of benefits, or as in this case, the recoupment of an overpayment.

In this case, the date of negative action was July 2, 2014. 45 days from July 2, 2014, fell on August 16, 2014, which was a Saturday. Pursuant to Wis. Stat. §990.001(4), the appeal deadline was August 18, 2014, since Hearings and Appeals has no office hours on Saturdays and Sundays.

The petitioner's appeal is considered filed on August 19, 2014, the date of the post-mark on his appeal. *See Wis. Admin. Code §DHA 3.05(3)(c)* Thus, it was untimely, by one day, and no jurisdiction exists for considering the merits of the case.

However, the agency should note that, “the benefit recovery period for incorrectly paid [MA] benefits shall be limited to one year prior to the date that the overpayment is discovered.” *Wis. Admin. Code §DHS 2.04(1)(b)*; *See Also Wis. Admin. Code §DHS 2.03(3) and Wis. Stats. Chapter 49 – Subchapter IV Medical Assistance*

According to Ms. Jones, the subject overpayment was discovered on October 19, 2013, so the overpayment can only extend back to October 2012.

The agency may, of its own accord, correct its error, even though no jurisdiction exists for DHA to order any correction. *See BadgerCare+ Eligibility Handbook §28.9*

### **CONCLUSIONS OF LAW**

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

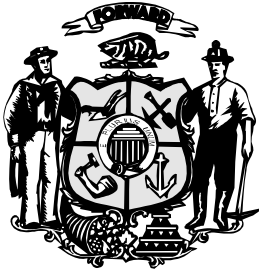
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 20th day of October, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 20, 2014.

Racine County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability